IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.3087 OF 2003

Brihanmumbai Municipal Corporation
thru' the General Manager,
BEST Undertaking ..Petitioner.

Vs.

Narayan S. Pisal ..Respondent.

...

Mr. S.K. Talsania, Senior Advocate i/b Crawford Bayley & Co. for the Petitioner.

CORAM: DR. D.Y. CHANDRACHUD, J.

13th September, 2006.

P.C. :

1. The Respondent was employed as a bus conductor by the Bombay Electric Supply and Transport Undertaking on 1st February, 1978. The Respondent was found guilty of a misconduct inter alia of pelting stones on a bus belonging to the Undertaking as a result of which the glass pane on the window screen of the bus was broken and it is alleged that the driver of the bus was injured. After a disciplinary enquiry the Respondent was dismissed from service on 8th April, 1985. The complaint by the Respondent of unfair labour practice was dismissed by the Labour Court on 21st December, 1995. In a revision filed by the Respondent under

Section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, the Industrial Court held that the punishment of dismissal was disproportionate though the misconduct was proved. The Undertaking was directed to reinstate the Respondent with continuity of service and without any backwages. The Respondent was thereupon reinstated on 23rd January, 1998. The Undertaking maintains a seniority list of its staff for every depot. In addition, a general seniority list is also maintained. Initially upon reinstatement the Respondent was restored to his original post in the seniority list on the basis of his initial date of appointment. Subsequently, a grievance was raised by certain other conductors who had gone down in the seniority list and thereupon it was realised that inadvertently the Respondent had been granted the benefit of his original seniority though he had been ordered to be reinstated without continuity of service by the Industrial Court. The position of the Respondent in the seniority list was revised. The Respondent thereupon preferred a complaint of unfair labour practices. The complaint was allowed by the impugned order dated 14th November, 2002.

2. The Industrial Court has held that even if, while passing

an order of reinstatement the workman is denied the benefit of continuity of service, that does not mean that the earlier number of years of service should not be considered for the purpose of seniority and other benefits. In this context, it would be material to extract from the judgment of the Industrial Court:

> "In my opinion when continuity of service is not granted that does not mean that the earlier number of years of services the complainant that has put in should not be considered for the purpose of seniority and other benefits. At the most when continuity of service is not granted the period for which the workman was out of service should be considered as not in service. When he is reinstated, his earlier number of service should be considered and while placing him in the seniority list, he should be placed alongwith the employees who had completed the equal number of years of service as that of the employee who has been reinstated. For example – suppose an employee by name 'A' has been reinstated without continuity of service in January, 1998 and the position is that his earlier service before his dismissal was of 5 years, then in such case the employee 'A' should be placed in the seniority list alongwith the employees who have completed 5 years of service at that point of time i.e. in January, 1998. Secondly the employee 'A' should be placed on the top of the employees who have completed 5 years of service as on in January, 1998. However, the respondents have considered the complainant's reinstatement as a fresh appointment on the date of reinstatement and he is not given the benefit of earlier service. Hence I find that the respondents have not done the proper interpretation of the order of the Industrial Court and have not implemented the order of the Industrial Court in proper spirit."

3. On behalf of the Petitioner it has been submitted that the order of the Industrial Court ex facie reveals a misappreciation of the true legal position. It was submitted that the Industrial Court granted reinstatement without backwages or continuity, the plain intendment was that the workman would not be entitled to the benefit of the past service that was rendered. The order of the Industrial Court was passed in the context of the finding of misconduct that was arrived at in a disciplinary enquiry. The Industrial Court has held that the misconduct was established, but that the punishment was disproportionate. It was in this context that the Industrial Court granted reinstatement but, denied backwages and continuity of service. The learned counsel submitted that by the impugned order the Industrial Court has in effect directed the Undertaking to grant to the workman the benefit of the service rendered prior to the date of dismissal as a result whereof, the direction for reinstatement without continuity of service would stand negated.

4. There is merit in the submission which has been urged on behalf of the Undertaking. Where an order of reinstatement is passed by a competent forum under industrial legislation, but

there is a specific direction denying to the workman benefit of continuity of service, the plain implication is that the reinstatement of the workman would not have the effect of granting to the workman the benefit of the service that was rendered prior to the date of dismissal. A perusal of the order of the Industrial Court dated 1st December, 1997 would show that the Court had agreed with the conclusion of the Labour Court holding the workman guilty of misconduct. The workman was charged with the misconduct of pelting stones on the bus belonging to the Undertaking as a result of which damage was caused to the property of the Undertaking and the bus driver was injured. In these circumstances, the Industrial Court held that while the misconduct was proved, an order of dismissal was not warranted. The correctness of that order does not fall for determination today since it was not challenged by

the Undertaking which reinstated the workman in service. Be that as it may, the intendment of the Industrial Court in denying

continuity of service was that some element of punishment was liable to be imposed on the workman on account of the fact that the misconduct was proved. Consequently, there was a denial of backwages and a direction that there should not be continuity of service. Once continuity of service is denied, it is wholly impermissible for the Industrial Court to hold that the years of service rendered by the workman prior to the date of reinstatement must be counted as part of the service of the workman for the purposes of assessing seniority. The denial of continuity would obliterate the benefit of the past years of service. In these circumstances, I am of the view that the submission that has been urged on behalf of the Undertaking is well founded and that the Industrial Court is manifestly in error in allowing the complaint. The Undertaking had proceeded to correct the seniority of the workman by treating him as having been engaged on the date of the order of reinstatement. In order to avoid any ambiguity, it is clarified that the date of seniority shall relate to the date of the order of the Industrial Court dated 1st December, 1997 directing the Undertaking to grant reinstatement without backwages and continuity of service.

5. In the circumstances, the Petition is allowed. The order of the Industrial Court dated 14th November, 2002 is quashed and set aside and complaint (ULP) 1014 of 2000 shall stand dismissed. In the circumstances of the case, there shall be no order as to costs.